

**THE STATE –v–**  
**KARALAINI LEDUA IKANIVERE BOSENIVAKAVULEWA &**  
**RAJESH SINGH**

Dated: 28<sup>th</sup> March 2013  
For Prosecutor: Ms. Prasad J. for DPP  
For Accused: Present. Mr. Rayawa

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**JUDGMENT**

1. The accused, **Mr. Rajesh Singh** was being charged along with **Ms. Karalaini Ledua Ikanivere Bosenivakavulewa** for ***“FALSE APPLICATION FORM”***, an offence ***contrary to Section 332(1) of the Crimes Decree.***
2. Ms. Karalaini Ledua had already pleaded guilty and sentenced to the said charge of ***“False Application Form”*** (3<sup>rd</sup> count) and to two other separate counts.
3. The particulars of the offence of the 3<sup>rd</sup> count, which is focused on Mr. Rajesh Singh, are as follows:  
***“Karalaini Ledua Ikanivere and Rajesh Singh between the 1<sup>st</sup> day of July to the 8<sup>th</sup> day of July 2011 at Suva in the Central Division knowingly made a false statement in an application for a passport and gave the said application form to the Immigration Department of Fiji, a government entity”.***
4. The Agreed Facts were tendered to court with the consent of both parties. Mr. Singh, pleading not guilty to the charge proceeded to go for a full Hearing. At the very onset, the learned Defence Counsel agreed upon with the Prosecution not to dispute the Caution Interview, the charge statement and the Application to obtain a Passport tendered to the Immigration Department of Fiji.

Thus, those documents were marked as Prosecution Exhibit Nos. 1, 2, and 3. These are the agreed facts of both parties;

- 1) The accused person, Rajesh Singh, aged 51 years, was operating a Driving School named Satellite Motoring School at the relevant time.
- 2) The full name of Rajesh Singh is Rajeshwar Singh.
- 3) Satellite Motoring School has a rubber stamp.
- 4) The rubber stamp of Satellite Motoring School is kept with Rajesh Singh.
- 5) The rubber stamp is used on business documents and applicants of people who are known by Rajesh Singh.
- 6) Rajesh Singh placed the rubber stamp of his company on the Passport application referred to in paragraph 5.
- 7) Rajesh Singh signed on the passport application referred to in paragraph 5.
- 8) Section 22 of the passport application form referred to in paragraph 5 read:

**22 WITNESS:** I confirm that I have known the application for 10 years and that he/she signed the certification at Section 20 before me and he/she fully understand its contents.

Full Name of Witness: *Rajesh Singh*

Occupation: *Driving Instructor*

Residential Address: *10 Rokoroi Road,  
Raiwai*

Employer Address: *Satellite Motoring  
School*

Signature of Witness:

Email:

Date: *08/07/2011*

[Stamp: Satellite Motoring School]

- 9) The said Passport Application Form referred to in Paragraph 5 was then lodged with the Immigration Department, a government entity, to obtain a Passport for Ane Vosawale Ikanivere, the Applicant.
- 10) Rajesh Singh did not know Ane Vosawale Ikanivere, the Applicant, at all.
- 11) The Immigration Department picked up the discrepancy in the Application Form after it was discovered, the Applicant, Ane Vosawale was not in the country since 2006.
- 12) The matter was reported to the police by the Immigration Department and investigated.
- 13) Rajesh Singh was caution interviewed by Sgt. Satish Chand of CID Headquarters.

5. Prosecution called only 1 witness to support the charge. He was Detective Sgt. 2572 Satish Chand. He was the Investigating Officer of this case. Upon him receiving a report from the Immigration

Department about a forged Application to obtain a Passport, he had recorded certain statements from the officers of the Immigration Department and uplifted certain documents for further investigations. He had further interviewed the suspects as well.

6. Sgt. Chand offered evidence on Exhibit No. 3, the Passport Application Form of the Government of Fiji. He referred to paragraph 20 & 22, of the said Application Form where the Applicant has to sign and a witness had to confirm that signature respectively.
7. Sgt. Chand confirmed that the Applicant of Exhibit No. 3, Ms. Ane Vosawale was out of the country according to the travel history of the Immigration Department. The travel history of the alleged Applicant of Exhibit No. 3 was marked as Prosecution Exhibit No. 4 and it confirms that the alleged Applicant had departed to the United States of America in December 2006.
8. Referring to Exhibit No. 1, the Caution Interview, Sgt. Chand said that the accused admitted during the Caution Interview that he placed his signature in paragraph 22 of Exhibit No. 3 (Q. 32 & 33).
9. In cross-examination, Sgt. Chand said that the admission of the accused is only for placing his signature and not for filling the Form. (Refer to Q. 31 of the Caution Interview). He said the accused told that was filled by Karalaini, the co-accused. Sgt. Chand agreed that it was not revealed during the interview whether the accused filled the Form or he had signed an already filled Form. Finally the Prosecution witness agreed to the fact that Karalaini did admit that it was she who filled the form in Q. 59 of her Caution Interview.
10. That was the case for the Prosecution. Upon the close of the Prosecution, the court decided to call for the Defence. All the rights enunciated in Section 179 of the Criminal Procedure Decree were explained to the accused and the learned Counsel for the accused informed court that the accused will remain silent and will call a witness on behalf of defence.
11. Ms. Karalaini Ledua Ikanivere was the Defence witness. She testified that the accused was initially charged with her and she pleaded guilty to the charges. She said that when she took the Form to the accused, the "witnessing part" was empty and it was only the second page of the Application Form (in which paragraph 22 contains) given to the accused. The 1<sup>st</sup> page was alleged to have kept in her office. She said, the accused would have thought that it was her Application for a Passport as she did not show him the 1<sup>st</sup> page.

12. Answering a specific question from court, the Defence witness said that the accused only put his signature and stamp in paragraph 22 of the Form and it was she who filled the other portions. She stressed that she takes all the responsibility of her conduct and she does not want the accused to be penalized.
13. In cross-examination of the Prosecution, the witness admitted that on 8<sup>th</sup> of July 2011, the date reflected in paragraph 22 of Exhibit No. 3, her sister or the Applicant of Exhibit No. 3 was definitely out of Fiji. Further, she said that she has known the accused for the past 6 years and it is definitely less than 10 years. The witness confirmed that question nos. 1 – 16 and 20 of this Application Form (Exhibit No. 3) were filled by her sister and the signature and thumbprint were also hers. The witness agreed that the signature and filling of Exhibit No. 3 by her sister was done in USA and somebody had brought it from her sister who is in the States.
14. Ms. Karalaini admitted that the accused did sign on Exhibit No. 3 because he was doing her a personal favour. She further admitted that the accused did not witness the signature and thumbprint of her sister when the accused signed on paragraph 22 of Exhibit No. 3.
15. In re-examination Ms. Karalaini admitted that she told the accused that it was her Application. That was the case of the accused. Then the court invited both parties to submit their written submissions.
16. Upon a close perusal of the 'positions' taken-up by the Prosecution and the Defence, it is quite clear that there is no dispute between the parties that the accused signed paragraph 22 of the Application in issue as a witness to the signature and the thumb print of the principal Applicant.
17. The learned Counsel for the accused, in his written submission argues that;

*"The prosecution is alleging that the accused Rajesh Singh knowingly made a false statement to the Immigration Department and therefore since it is a Government entity then strict liability applies. This argument fails to consider that the actus reus of the offence, which is "knowingly makes a false statement..." has an additional requirement involving the proving of the fault element. That is that complication that arises from the express language in the statute as seen in the context of other words such as "knowingly" or "knowing" also used in*

*other parts of the same section. A clear case of reading those words to accurately reflect the intention of the legislation. We respectfully submit that the word “knowing” used in Section 332 requires the proof of some fault element in the prosecution’s case, which they have failed to do in this case”.*

He concludes that the ‘*element of knowing has not been proven at all as no evidence was led to rebut the evidence of Karalaini Ikanivere Bosenivakavulewa’.*

18. The following case authorities cited by the learned Defence Counsel, among other decided authorities, are to the point.

- \* **Buchanans Foundry Ltd v- Department of Labour [1996] 3 NZLR 112**
- \* **McLaren Transport Ltd v- MOT [1986] 2 NZLR 81 of 83**
- \* **Re-Wairarapa Electrion Petition [1988] 2 NZLR 74 at 117**
- \* **Millar v- Ministry of Transport [1986] 1NZLR 660 (CA)**
- \* **State v- Hong Kuo Hui [2005] FJHC 732; HAC 40.2004**

19. The crux of his argument is that the court should find absolute liability only when it is imposed in express terms or by necessary implication. Highlighting **Hong Kuo Hui**, the Counsel argues that “when the legislation uses the word “knowingly”, then it is not a strict liability offence”. The conclusion is that the accused, though signed the “witnessing part” of the Application in issue did not have the requisite knowledge to make a false statement demanded by the penal Section (332) as this is not a “strict liability offence”. In that background the case of the prosecution should fail as they have not led any evidence to show that the accused possessed the “knowledge” to the effect that the statement he made was false.

20. The argument of the prosecution is contrary. The learned Prosecutor avers that the Defence has agreed to the point that the accused signed and stamped on paragraph 22 of the Passport Application in issue and the said application was lodged with the Immigration Department. Since the Immigration Department is a government entity, the principle of “Absolute Liability” applies. In support of her argument, the learned State Counsel relied on the case authority of **Hong Kuo Hui** (supra), **Black’s Law Dictionary** and **Archbold** (Edition 2010) chapter 9.

21. At the same time, Prosecution states that *“the accused person has attested to which he states that he has seen the applicant signing and putting his or her thumbprint”* and therefore regardless of the belief of the accused as to whose Application Form it was, the fact remains that the accused did not see anyone signing or putting his/her thumbprint in front of him. Prosecution’s argument is that in this context, the accused had the ‘knowledge’ that his attestation is false.
22. Further, the prosecution submits that the evidence of Ms. Ikanivere, the co-accused cum defence witness’s evidence must be treated with caution. Finally, prosecution urges that court can rely on Section 332(7) of the Criminal Procedure Decree and convict the accused if the court is not satisfied that the accused is guilty of an offence under Section 332(1), but thinks that the accused was ‘reckless’ in committing this offence.
23. Upon perusing the written submissions of the prosecution all what this court can see is that even the learned Prosecutor is not sure whether the ‘offence’ is ‘Absolute Liability’ in nature or not. It is quite visible when the prosecutor has identified one ‘element’ of the ‘offence’ to be proved as ‘knowing that the statement is false or misleading’. That must be the reason for the prosecution to address all possible aspects; namely absolute liability of the offence, possessed ‘knowledge’ of the accused, unreliability of the evidence of a co-accused and more watered down “recklessness” of the accused, instead of “knowledge”.
24. It is in this background this court wishes to pursue the legal background of Section 332(1) of the ***Crimes Decree 332. — (1) A person commits a summary offence if he or she —***
- (a) makes a statement (whether orally, in a document or in any other way); and
  - (b) does so knowing that the statement —
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and
  - (c) the statement is made in, or in connection with —
    - (i) an application for a passport, licence, permit or authority; or
    - (ii) an application for registration; or
    - (iii) an application or claim for a benefit; and
  - (d) any of the following sub-paragraphs applies —
    - (i) the statement is made to a government entity;
    - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, any law;

(iii) the statement is made in compliance or purported compliance with any law.

Penalty — Imprisonment for 2 years.

25. Section 332(2) attracts much more importance.

***(2) Absolute liability applies to each of the sub-paragraph (1)(d)(i), (ii) and (iii) elements of the offence.***

26. Before analysing the above section, it is worth to note what it is exactly meant by 'strict liability' and 'Absolute Liability' offences. **Justice Winter** in **Hong Kuo Hui's** case elaborates those two phenomena in the following manner

(c) **Strict liability:** The prosecution is required to prove the actus reus, but in relation to one or more elements of the actus reus, there is no mens rea element to prove. However, the defendant can prove absence of fault in his part in order to exculpate themselves.

(d) **Absolute liability:** The offence is complete upon proof of the actus reus. There is no requirement to prove mens rea; neither can be defendant claim an absence of fault in his or her own defence.

27. It is with the above analysis, that one has to view the offence enunciated in Section 332(1). When Section 332(1)(b) says "does so knowing that the statement", it is apparent that the offence warrants 'Mens Rea or faulty element' to be proved beyond reasonable doubt to establish the charge in a criminal context. Then is it contradictory to introduce Section 332(2) and make the offence "Absolute liability"?

28. This is the main issue needs clarification to sought out the matter before hand and it is the view of this court that both parties did not manage to identify the 'rationale' underlining the said two sections. That is the sole reason for the learned Defence Counsel to totally avoid or ignore the "Absolute Liability" factor and stress on the absence of "knowledge" of the accused. That is the sole reason for the learned Prosecutor to identify "knowledge" as an element of the offence while claiming the offence is of "Absolute liability".

29. It is in the light of the above, this court wishes to re-visit the said provisions. First, it should be bone in mind that Section 332(2) applies only to Section 332(1)(d)(i)(ii) and (iii). In another words, a false or misleading statement is been made;

- \* To a government entity,
- \* To a person who is exercising powers or performing functions under, or in connection with, any law, or
- \* In compliance or purported compliance with any law – ‘Absolute Liability’ applies.

30. As observed by **Justice Winter** in **Hong Kuo Hui** “If mens rea is not implied in an offence provision, ie. if the offence is not an indictable or truly criminal offence, or if you cannot infer mens rea from the statutory language, then the presumption of mens rea is overridden”.

In **Millar v. Ministry of Transport** [1986] 1 NZLR 660 (CA) **McMullin J** stated (in page 672) that in such a case the Court must determine whether an offence is an offence of absolute liability or strict liability.

His Lordship went on to say “it is of utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that unless a statute either clearly or by necessary implication rules out mens rea as an element of a crime, the defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind”.

The essence of the said judgment of **Hong Kuo Hui** guided by **Miller v. Ministry of Transport** [1986] 1NZLR (CA), is that “the modern position was that absolute liability offences ought to be rare, that parliament ought to provide statutory defences for such offences and that the court should find absolute liability only when it is imposed in express terms or by necessary implications”.

31. In this particular instance there is no issue of inferring or presuming that the “mens rea” of the offence is over ridden as stated by **Justice Winter**, Section 332(2) imposes absolute liability not in necessary implications but in express terms. With the specific categorization of the offence as “Absolute Liability” in nature, Section 332(2) has simply overridden the stipulated mental element to the offence in Section 332(1). Therefore as stated by **Justice Winter** there is no requirement for the prosecution to prove the mens rea of the accused and the defendant cannot claim the absence of fault in his defence.

32. As stated earlier, it is agreed upon between both parties that the accused signed and stamped on paragraph 22 of the Application Form in issue (Exhibit No. 3) and the said Application Form was lodged with the Immigration Department, which is a government entity, in view of obtaining a Passport to one Ane Vosawale, a person the accused did not know. Therefore the moment the



accused admits that he placed his signature and stamp on Section 22 to certify that “.....she signed the certification at Section 20 before me and she fully understand its contents” and the said ‘she’ is admittedly not present to sign on Section 20 when the accused signed on Section 22, the “actus reus” or physical component of the offence is being fulfilled and the matter ends there. There is no issue of disputing whether the accused has the requisite knowledge in committing the offence.

33. At this juncture the court sees that, though it is not an issue, if one wants to pursue the matter of “knowledge” of the accused, it is also plainly visible in the conduct of the accused. It was the defence witness who said that she did not show the first page of Exhibit No. 3 to the accused at the time the accused attested Section 22. But the attestation of Section 22 refers to certification of the signature placed by the Applicant at Section 20, which contains in the page the accused had not even seen. Thus, the moment the accused placing his signature and the stamp on Section 22, he should know that the applicant has not signed before him at Section 20 and therefore he is making a false statement. That is the “knowledge” that this court expects from any reasonable man in the society to possess in this type of a situation. Placing one’s signature to attest a vital portion of a document, which is intended to be submitted to a government institute, cannot be taken that much lightly and that is the sole reason for the law makers to make it cristal clear with the coating of “Absolute Liability”.

34. According to the facts discussed at length in the foregoing paragraphs, I conclude that it is not only the prosecution established beyond reasonable doubt all the necessary elements of the charged offence but the defence itself had agreed upon with almost all those elements being fulfilled by the accused. Therefore I see no difficulty in concluding that the prosecution has proved its case beyond all reasonable doubts. Thus I convict the accused to the charge accordingly.

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Mr. Janaka P. Bandara  
**Resident Magistrate, Suva**

Dated: **28<sup>th</sup> March 2013**

cc: **1. Mr. Rayawa**  
**2. DPP**